Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 79-5338

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

BERNARD H. BYNUM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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MEMORANDUM FOR THE UNITED STATES

Petitioner contends that imposition of a special parole term as part of his sentence for conspiracy to violate federal narcotics laws is unlawful.

Upon his plea of guilty, petitioner was convicted in the United States District Court for the District of Maryland on one count of conspiracy to possess a controlled substance with intent to distribute it, in violation of 21 U.S.C. 846.[1] Petitioner was sentenced to twelve years' imprisonment to be followed by a three-year term of special parole. Thereafter, petitioner filed a motion to correct sentence pursuant to Rule 35, Fed.R.Crim.P., claiming that imposition of the special parole term was not authorized by Section 846. The district court denied the motion (Pet. App. B), and the court of appeals affirmed per curiam (Pet. App. A).

The question presented in this case is identical to that presented in Bifulco v. United States, cert. granted, No. 79-5010 (Oct. 9, 1979).[2] In that case, the court of appeals held that it is proper to impose a special parole term for a drug conspiracy in violation of Section 846 whenever such a term is required for the substantive offense. Bifulco v. United States, 600 F.2d 407, 409-410 (2d Cir. 1979). With one exception,[3] every other court of appeals to have considered this question has reached the same conclusion. United States v. Sellers, No. 79-1107 (8th Cir. Aug. 7, 1979), slip op. 11-14; Cantu v. United States, 598 F.2d 471, 472 (5th Cir. 1979); United States v. Burman, 584 F.2d 1354, 1357-1358 (4th Cir. 1978); United States v. Jacobson, 578 F.2d 863, 867-868 (10th Cir.), cert. denied, 439 U.S. 932 (1978). See also United States v. Dankert, 507 F.2d 190, 191 (5th Cir. 1975).

We believe that the holdings in Bifulco and similar cases are correct, and that imposition of a special parole term as part of petitioner's sentence was therefore proper. Nonetheless, because this question is currently before this Court, the Court should defer consideration of this petition and dispose of it in light of the holding in Bifulco.

Respectfully submitted.

WADE H. McCREE, JR.
Solicitor General

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1/ Upon acceptance of the plea, a second count charging a violation of 21 U.S.C. 841(a)(1) was dismissed.

2/ We are sending petitioner a copy of the government's response to the petition in Bifulco.

3/ United States v. Mearns, 599 F.2d 1296 (3d Cir. 1979), petition for cert. pending, No. 79-415.